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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/755,534	01/12/2004	Armin Bolz	298-225	1318
28249	7590	03/13/2006	EXAMINER	
DILWORTH & BARRESE, LLP 333 EARLE OVINGTON BLVD. UNIONDALE, NY 11553				KAHELIN, MICHAEL WILLIAM
ART UNIT		PAPER NUMBER		
		3762		

DATE MAILED: 03/13/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No.	Applicant(s)	
	10/755,534	BOLZ, ARMIN	
	Examiner	Art Unit	
	Michael Kahelin	3762	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
 - If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
 - Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) Responsive to communication(s) filed on 21 February 2006.
- 2a) This action is **FINAL**. 2b) This action is non-final.
- 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) Claim(s) 1-32 is/are pending in the application.
 - 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) Claim(s) _____ is/are allowed.
- 6) Claim(s) 1-32 is/are rejected.
- 7) Claim(s) 16 is/are objected to.
- 8) Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) The specification is objected to by the Examiner.
- 10) The drawing(s) filed on _____ is/are: a) accepted or b) objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
 - a) All b) Some * c) None of:
 1. Certified copies of the priority documents have been received.
 2. Certified copies of the priority documents have been received in Application No. _____.
 3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|---|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____. |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____. | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| | 6) <input type="checkbox"/> Other: _____. |

DETAILED ACTION

Specification

1. The amendments to the specification are acknowledged and accepted. The objections are withdrawn.

Claim Objections

2. The amendments to claims 1, 15, 18-21, 23, and 24-29 in regards to the claim objections are acknowledged and accepted. The objections to claims 1, 15, 18-21, 23, and 24-29 are withdrawn. Claim 16 remains objected to because of the following informality: "to" should be inserted between "according" and "claim".

Claim Rejections - 35 USC § 112

3. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.
4. Claims 1-16, 27, 29 and 32 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.
5. In regards to claim 1, "sensing step" is vague because it is unclear whether this is referring to the "providing", "determining", or a new additional step.

6. In regards to claims 4-7, “measuring values/data/signals” is vague because it is unclear whether this is referring to the “parameter that characterizes the cardiac activity of a patient”, or a new additional element.
7. In regards to claim 7, “the signal evaluation unit” is lacking antecedent basis. It is suggested to first positively recite this element before further limiting it.
8. In regards to claim 8, it is unclear whether “generating an...alarm” is an additional method step, or further limits the alarm recited in claim 1.
9. In regards to claim 9, it is unclear whether the invention comprises a defibrillator, or merely outputs a signal adapted to activate some unclaimed defibrillator. In other words, the metes and bounds of the claim are not known because it is unclear whether the invention actually includes a defibrillator, or only generates a signal sent to one.
10. In regards to claim 14, the terms “stored values” and “information on a storage location, from which the values can be retrieved” are vague because no method step has been set forth to store values.
11. In regards to claim 27, it is unclear how the “motion sensors” elements relate to the other claimed elements, amounting to a gap in necessary structural relationships.
12. In regards to claim 27, it is unclear how the “means for obtaining information” element relates to the other claimed elements, amounting to a gap in necessary structural relationships.
13. In regards to claim 32, the defibrillator element is inferentially included, rendering it unclear whether this element is part of the claimed invention. It is suggested to first positively recite this element before further limiting it.

14. The amendments to claims 17, 20, 25, and 28 are acknowledged and accepted.

The 35 U.S.C. 112(2) rejections of claims 17-26, and 28 are withdrawn.

Claim Rejections - 35 USC § 102

15. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

16. Claims 1, 3, 8, 9, 11-15, 17, 29, 30 and 32 are rejected under 35 U.S.C. 102(b) as being anticipated by Lowell et al. (6,292,687 B1).

17. In regards to claims 1, 17 and 32, Lowell et al. disclose an apparatus and method for detecting an anomaly in cardiac activity comprising a sensor (fig. 1, element 27) that determines a parameter that characterizes cardiac activity of a patient (col. 2, line 51), carries out an automatic evaluation (col. 2, element 57), and an alarm signal is generated if a parameter characterizing the anomaly is exceeded (col. 2, line 60).

18. In regards to claim 3, the parameter is a pulse (col. 2, line 53).

19. In regards to claim 8, an audio and visual alarm are activated (col. 3, line 1).

20. In regards to claim 9, Lowell et al. disclose that that a remote alarm is activated at the nearest AED location (col. 3, line 18). Please note that the examiner is interpreting this alarm activation as the "direct activation of the defibrillator".

21. In regards to claims 11-13 and 30, a flag signal is generated and transmitted wirelessly via Bluetooth (col. 7, line 25). Please note that, since "short-range" and

"long-range" are presented in the alternative, "Bluetooth" meets the limitations of the claim language.

22. In regards to claims 14, 15 and 17, patient cardiac data is transmitted with the flag signal (col. 2, line 67). The examiner is interpreting patient cardiac data as the visual and auditory alarm that indicates cardiac arrhythmia. Furthermore, this audio-visual alarm provides information on the current location of the patient.

23. Claims 1-10, 16-28 and 31 are rejected under 35 U.S.C. 102(b) as being anticipated by Heilman et al. (5,078,134).

24. In regards to claims 1, 2, 3, 17, 18, and 31, Heilman et al. disclose an apparatus which uses a sensor to determine a parameter (ECG) indicating a cardiac fibrillation and an alarm signal is generated in the form of a defibrillation shock (col. 9, line 50), or a visual display (col. 13, line 30). Furthermore, Heilman et al. disclose a device having a sensor (col. 8, line 5), signal evaluation unit (col. 8, line 15), and a signal transmitter (col. 8, line 57). Further, the signal generator is connected to a signal transmitter (col. 8, line 46).

25. In regards to claim 4, the sensor is on a thoracic band (Fig. 4).

26. In regards to claim 5, 6 and 23, the sensory acquisition and evaluation can be considered to be spatially separated or spatially adjacent and transmitted to a different location. In the spatially separated case, the electrode is on the patient's chest and the evaluation unit is on the waist. In the adjacent case, the electrode and evaluation unit are on the patient and the data is transferred to the maintenance subsystem (col. 9, line 1).

27. In regards to claim 7, the results are wirelessly transmitted to a signal generator (col. 9, line 15), the signal generator being the modem.

28. In regards to claims 8, 9, 10 and 25, an acoustic alarm is generated (col. 8, line 46), the alarm signal causes a direct activation of the defibrillator (col. 8, line 51), and the device has a memory that stores cardiac activity parameters (col. 8, line 25).

29. In regards to claims 16 and 27, a chest wall sensor determines if and how the patient is moving (col. 8, line 6).

30. In regards to claims 20, Heilman et al. disclose a mobile device with a voltage generator, control unit, and two electrodes (col. 8 and fig. 1)

31. In regards to claims 21, the signal evaluation unit forms part of the control unit (fig. 1), (both units are interpreted to be components of the microprocessor).

32. In regards to claim 22, the signal evaluation unit is spatially separated from the control unit (the signal evaluation unit is considered to be the patient-worn component and the control unit is considered to be the maintenance subsystem).

33. In regards to claim 24, the sensor is considered to be the patient-worn component and the signal evaluation unit is considered to be the maintenance subsystem, and are connected by a wireless link.

34. In regards to claim 26, the signal transmitter (defibrillator electrode) and signal generator are connected in a wire-bound fashion (Fig. 4).

In regards to claim 28, the sensor (Fig. 4, element 36) comprises defibrillator electrodes (Fig. 4, element 20).

Response to Arguments

35. Applicant's arguments filed 2/21/2006 have been fully considered but they are not persuasive. Applicant argued that the new claim limitations "wherein the evaluating step and/or generating step are/is carried out remotely to the sensing step on the patient" and "said evaluation unit and/or signal transmitter are/is positioned remotely from said sensor on the patient" are not anticipated by the prior art references. However, as shown in Figure 1 of the Lowell reference, the alarm (30) is remote from the sensor on the patient (27) (i.e. separate units); as well as Figure 4 of the Heilman reference (elements 22 and 24), thus meeting the limitations of the claim language.

Conclusion

36. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of

Art Unit: 3762

the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Michael Kahelin whose telephone number is (571) 272-8688. The examiner can normally be reached on M-F, 9-5.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Angela Sykes can be reached on (571) 272-4955. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

MWK


3/7/06

GEORGE R. EVANISKO
PRIMARY EXAMINER

3/9/06